

**IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD**

(Special Original Jurisdiction)

THURSDAY, THE NINETEENTH DAY OF AUGUST
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE S.ANANDA REDDY

WRIT PETITION NO : 5215 of 1997

Between:

B.Ramulu, S/o Venkaiah,
R/o Post & Village: Rayala Madugu, Via, Macharam, Medak Dist.,
Pin-502109.

..... PETITIONER

AND

- 1 The Regional Manager, APSRTC, Medak Region,
Sangareddy, Medak Dist.
- 2 The Depot Manager, APSRTC, Bus Depot, Medak.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue appropriate order, direction or writ, particularly one in the nature of writ of mandamus, declaring the impugned action of the 2nd respondent in not considering the withdrawal of resignation of the petitioner and communicating acceptance of the resignation by giving ante-date, 15-7-95 vide registered post receipt No.3703 dt.13-11-96, thus served on 16-11-96, after submission of application by the petitioner for withdrawal of resignation on 27-5-96 and 23-8-96, as arbitrary, illegal, unjust, in violation of principles of natural justice, violative of Art.14, 16 and 21 of the Constitution of India; and also in violation of Regulations of the respondent corporation and consequently direct the 2nd respondent to reinstate the petitioner into service with all benefits;

Counsel for the Petitioner:MR.V.NARASIMHA GOUD

Counsel for the Respondent Nos.1 and 2: Mr.K.Harinath(SC FOR APSRTC)

The Court made the following :

O R D E R:

This writ petition is filed by the petitioner praying for the issue of writ of mandamus declaring the impugned action of the 2nd respondent in not considering the withdrawal of the resignation of the petitioner, and communication of the acceptance of the resignation by antedating to 15.7.1995, which was served by registered post dated 13.11.1996 on the petitioner on 16.11.1996, after submission of the application by the petitioner for withdrawal of the resignation, as arbitrary, illegal, unjust, without jurisdiction apart from the violative of the provisions of the Constitution of India, and consequently to direct the 2nd respondent to continue the petitioner in service.

2. According to the petitioner, he fell sick in the first week of June, 1995. Therefore, the petitioner submitted a resignation letter dated 13.6.1995. As no orders have been passed on the said resignation, the petitioner made a representation dated 27.5.1996 withdrawing his resignation and sought for permission to resume duties. But, as there was no proper response from the 2nd respondent-Depot Manager, the petitioner thereafter made another representation, dated 23.8.1996 to the 1st respondent. In pursuance of the said representation, the 1st respondent by proceedings dated 12.9.1996 directed the 2nd respondent to furnish the information about the acceptance or otherwise of the resignation of the petitioner and also directed to send a detailed report on the above subject so as to consider the representation of the petitioner. It is stated that it is only thereafter the 2nd respondent moved in the matter and passed an order antedating the acceptance of the resignation dated 13.6.1995 as if the order was passed accepting the said resignation on 15.7.1995 itself, and communicated the said acceptance through registered post dated 13.11.1996, which was served on the petitioner on 16.11.1996. Aggrieved by that, the petitioner has come up with the present writ petition.

3. At the time of hearing, it is stated that by virtue of the interim orders of this Court, dated 14.9.1998, the petitioner was taken back into service and is being continued in service.

4. The learned counsel for the petitioner contended that the 2nd respondent was in error in accepting the resignation of the petitioner when a representation has been made seeking to withdraw the earlier resignation, as early as on 27.5.1996. It is

contended that the service of an order of acceptance of resignation on 16.11.1996 on the petitioner shows that the 2nd respondent passed the order only before the said communication, but antedating the said proceedings, as if the order was passed on 15.7.1995. According to the learned counsel, had the resignation been accepted on 15.7.1995, there was no justification on the part of the 2nd respondent in not communicating the same immediately after its acceptance or at least when a representation has been made by the petitioner on 27.5.1996 withdrawing his resignation. Therefore, from the conduct of the 2nd respondent it is clear that the resignation of the petitioner was accepted only in November 1996 just before the said order was communicated to the petitioner, by antedating as if it was passed in July 1995. As the said acceptance was after the withdrawal of the resignation by the petitioner, the said acceptance is illegal and unsustainable.

5. A counter has been filed on behalf of the respondents disputing and denying the allegations made by the petitioner. In the counter it is stated that the petitioner was appointed as a casual driver w.e.f. 1.9.1987. While he was working in the Depot attached to the 2nd respondent, the petitioner submitted his resignation on 13.6.1995 due to some personal reasons. The said resignation letter was accepted by the 2nd respondent on 15.7.1995 and a copy of the order passed was handed over to the petitioner personally on 15.7.1995 itself. It is stated that on enquiry it was learnt that the petitioner resigned to the post to contest in the elections for the Grampanchayath, Rayalamadugu, for which the elections were held in the month of June 1995. It is also stated that the petitioner has won in the elections. It is submitted that the petitioner had submitted an application requesting the respondent to take him back to duty on 27.5.1996. In the said application it was specifically stated that he did not receive the order accepting his resignation. But, however, it is stated the acceptance order dated 15.7.1995 was produced by the petitioner before the MPDO, Medak, while contesting to the Gram Panchayath Elections. Therefore, a spare copy of the order accepting the resignation was sent again on 13.11.1996 to the petitioner for his information. As the petitioner had contested in the Gram Panchayat elections in the year 1995, he cannot change his stand and come back with a plea that his resignation was not accepted by the authorities. It is stated that this clearly shows that the petitioner has prepared it as a ground to come back to service in the event of his losing elections. It is further stated that the petitioner was not satisfied with the post of Sarpanch, and, therefore, he has submitted the letter withdrawing the

resignation.

6. At the time of hearing the learned counsel contended that as the resignation of the petitioner was accepted, there is no case for taking him back into service. However, when the matter was heard on the last occasion, after hearing both sides, the learned counsel for the respondent-corporation was directed to produce the records so as to prove the service of the order passed accepting the resignation on the petitioner. Though, the learned counsel has obtained the records from the corporation, but, however, he was unable to show any evidence in proof of service of the order of acceptance of the resignation on the petitioner either in the month of July, 1995 or there after till 13-11-1996 when it was sent by registered post, or he could produce any evidence showing that the petitioner has produced the said order before the Election Authority, who conducted elections to the Grampanchayat.

7. Heard both sides and considered the material available on record.

8. Admittedly, the petitioner submitted his resignation on 13-06-1995. It was stated that the said resignation was on for personal reasons and not with an intention to contest in the Grampanchayat elections. But, however, it appears that the petitioner, in fact, contested in the elections and was got elected unanimously as Sarpanch of the Grampanchayat. But, later he has resigned to the said post of Sarpanch and approached the 2nd respondent with a representation dated 27.5.1996 proposing to withdraw his resignation dated 13-06-1995. In the said representation, the petitioner has specifically stated that his resignation was not accepted. As there was no response from the 2nd respondent, thereafter, the petitioner again represented by letter dated 23-08-1996 to the 1st respondent bringing to his notice that there was no response from the 2nd respondent for his withdrawal. Thereafter only, the 1st respondent sent a communication dated 12-09-1996 to the 2nd respondent calling for a report from the 2nd respondent as to the factual details about the acceptance or otherwise of the resignation submitted the petitioner. It is only thereafter the petitioner received the acceptance of his resignation through registered post, which was served on him on 16-11-1996. The said order shows that the resignation letter was accepted on 15-07-1995. According to the petitioner, the said acceptance is anti-dated to 15-07-1995, though it was accepted only in the month of November, 1996. According to the petitioner, when no order was passed and communicated to

him accepting his resignation, the petitioner made a representation withdrawing his resignation. Therefore, there is no justification on the part of the respondents in passing orders accepting the resignation of the petitioner, that too with an anti-date. Though the respondent-corporation disputed that the acceptance order was anti dated, but, the Corporation was unable to produce any evidence showing that the order accepting the resignation was passed on 15-07-1995, either by showing the proof of service of said order on any date prior to 16-11-1996. In fact, it was the stand of the corporation that the order was served on the petitioner personally when the petitioner was present in the office. But there is no proof of such service. In the absence of the service of the order on any date prior to 16-11-1996, it has to be presumed that the order was not passed by the respondent-authorities prior to November,1996.

9. Under the above circumstances, there is no justification in passing an order accepting the resignation of the petitioner, especially when the petitioner sent a representation dated 27-05-1996 withdrawing his resignation, much before the receipt of any communication about the acceptance of the same. Unless and until, the acceptance of the resignation is communicated to the petitioner, the petitioner is well within his rights to withdraw his resignation. Therefore, the respondents are not justified in denying the petitioner to join to duty. In fact, at the time of hearing it is represented that as per the interim order dated 14-09-1998, the petitioner was taken back into service and is being continued in service.

10. Under the above circumstances, the writ petition is allowed, and the impugned order dated 15-07-1995 is set aside. However, it is made clear that during the period of absence of the petitioner, i.e., after 13-06-1995 till he was taken back into service by virtue of the interim order of this Court, the respondents are directed to treat the said period of absence as leave without pay.

11. The writ petition is accordingly allowed. No costs.

S.ANANDA REDDY, J.

KVH/Mji

That Rule Nisi has been made absolute as above.

Witness the Hon'ble Sri Devinder Gupta, the Chief Justice on this Thursday the nineteenth day of August, two thousand and four.

ASSISTANT REGISTRAR.

To

- 1 The Regional Manager, APSRTC, Medak Region,
Sangareddy, Medak Dist.
- 2 The Depot Manager, APSRTC, Bus Depot, Medak.
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